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Rhonda Zaffino
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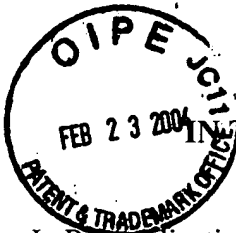
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BOARD OF PATENT APPEALS AND INTERFERENCES

In Re Application of:)	
)	
Thomas D. Petite)	Examiner: Evans, Fannie L.
)	
Serial No: 08/825,576)	Art Unit: 2877
)	
Date Filed: March 31, 1997)	Confirmation No.: 1135
)	
For: Transmitter for Accessing Automated)	Docket No: 81607-1010
Financial Transaction Machines)	

The following is a list of documents enclosed:

Return Postcard
Reply to Examiner's Answer (Original + 2 Duplicate Copies)

Further, the Commissioner is authorized to charge Deposit Account No. 20-0778 for any additional fees required. The Commissioner is requested to credit any excess fee paid to Deposit Account No. 20-0778.



ORIGINAL

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In Re Application of:

Thomas D. Petite

Serial No: 08/825,576

Date Filed: March 31, 1997

For: **Transmitter for Accessing Automated
Financial Transaction Machines**

Examiner: Evans, Fannie L.

Art Unit: 2877

Confirmation No.: 1135

Docket No: 81607-1010

REPLY TO EXAMINER'S ANSWER

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In general, Applicant respectfully disagrees with the position taken by the Examiner in the Examiner's Answer. In this regard, Applicant relies upon the arguments advanced in the Appeal Brief filed October 31, 2003. However, Applicant offers the following additional comments in reply to the Examiner's Answer.

In general, the Examiner's Answer repeats the rejections as set forth in the Final Office Action in the above-referenced patent application. Accordingly, Applicant reasserts the arguments that were set out in the Appeal Brief. Applicant does wish, however, to provide a few additional points.

In supporting the rejection of claims 26-28, 30 and 31, the Examiner's Answer alleges "[t]he specification lacks a standard for determining/measuring the degree of power intended (low) in the claims. Low is a relative term and the use of the terminology 'low-power transmitter' in claims 29 and 30 does not distinguish the claimed transmitter over the wireless

transmitter of *Petite et al.*” (Page 3, lines 12-15). The Examiner’s allegations regarding Applicant’s “low-power transmitter” essentially focus on two issues: 1) whether Applicant’s specification provides a standard for determining the degree of power intended in the claims; and 2) whether Applicant’s transmitter is distinguishable from U.S. Patent No. 5,714,931 to *Petite et al.* (hereinafter referred to as *Petite*).

Addressing the first of these allegations, Applicant respectfully asserts that the Examiner’s Answer fails to recognize that Applicant’s specification and *Petite* both utilize transmission distance as a standard for determining the degree of transmitter power.

Specifically, Applicant’s “low-power transmitter,” as described in the specification and the Appeal Brief, provides:

that a user will have to be in close proximity, (e.g., several feet) to the receiver 18 of an AFTM 10 in order to use the transmitter. This would help alleviate problems which may occur if a user approaching an AFTM 10 is circumvented by a second, more distantly located user who depresses his transmit button.

(Application page 10, lines 13-18; Appeal Brief pages 15-16). The language “will have to be in close proximity” has the effect of limiting the transmission distance and thus essentially restricts the transmitter power in terms of transmission distance.

Petite also discloses transmitter power in terms of transmission distance. However, in contrast with Applicant’s “low-power transmitter,” the transmitter of *Petite* “transmits an FSK tone modulation signal 115 (see FIG. 1) similar to that of a cellular phone, which preferably reaches a minimum of 150 feet away” (col. 3, lines 44-46). Consistent with Applicant’s specification, *Petite* discloses transmitter power in terms of transmission distance. Thus, in view of the cited reference and Applicant’s specification, Examiner’s Answer incorrectly fails to recognize transmission distance as a standard for determining relative transmitter power.

Addressing the second allegation cited above, Applicant's transmitter is clearly distinguishable from that of *Petite*. As cited above, the "low-power transmitter" of Applicant's claims transmits several feet, for example, according to the specification. In contrast, the transmitter of *Petite* transmits at least 150 feet. First, the transmitters of Applicant and *Petite* are distinguishable in that the general transmission distances cited are significantly different. As cited above, Applicant's specification limits transmission distance to several feet whereas *Petite* requires a transmission distance of more than 150 feet. In addition to the distinction between several feet and 150 feet, Applicant refers to transmission distances in terms of a maximum whereas *Petite* refers to transmission distance in terms of a minimum. Thus, in addition to incorrectly failing to recognize transmission distance as a standard for determining degree of power, the Examiner's Answer incorrectly concludes that the term "low-power transmitter" does not distinguish the claimed transmitter over the wireless transmitter of *Petite*. For at least these reasons, Applicant respectfully submits that claims 26-28, 30 and 31 are patentable over *Petite*. Accordingly, Applicant respectfully requests that this rejection be withdrawn and claims 26-28, 30 and 31 be allowed.

Additionally, in rejecting claims 26-28, the Examiner's Answer incorrectly characterizes *Petite* as disclosing "formatting logic disposed to **receive an output from both the mechanism for reading information from a magnetic strip of a bank card** and the receiver". (Examiner's Answer page 4, first paragraph, *emphasis added*). The Examiner's Answer incorrectly bridges the gap between the suggested locations for implementation apparently taught by *Petite* and the functions possibly performed in an automated teller banking machine. The Examiner's Answer reads:

The transceiver (130) of *Petite et al* **is located within** an automated teller banking machine (column 4, lines 22-25 and column 5, lines 30-32). The automated teller

banking machine (ATM) inherently **contains** data formatting logic disposed to receive an output from the mechanism for reading information from a magnetic strip of a bank card.

(Examiner's Answer page 4, first paragraph, *emphasis added*). The Examiner's Answer incorrectly creates a nexus between the location of a transceiver and the functionality of other devices at that location.

As noted in the Examiner's Answer, *Petite* reads "[t]he structure for locating the transceiver 130 may be almost any structure, including an automatic teller machine (ATM), a **grocery store**, or the like." (*Emphasis added*). The reasoning in the Examiner's Answer appears to provide that, because the transceiver disclosed in *Petite* is located within an ATM structure, the transceiver must necessarily comprise functions performed by the ATM. Application of this reasoning to other structures listed by *Petite* as preferable locations of implementation would provide that the transceiver disclosed in *Petite* also comprises functions performed by grocery stores. This reasoning would be akin to attributing a braking function to a radio merely because the radio is installed in an automobile.

As additional evidence of the incorrect characterization of *Petite* in the Examiner's Answer, *Petite* also defines a preferable structure in terms of connection requirements stating that "[t]he structure that the transceiver is located preferably includes a 110 volt electrical outlet and a telephone line." (Column 5, lines 34-36). Noticeably missing is the requirement of any structure for connecting the transceiver of *Petite* and the ATM. Thus, aside from mere structural proximity, the *Petite* transceiver does not appear to comprise any functions which suggest, teach or disclose formatting logic disposed to receive an output from both the mechanism for reading information from a magnetic strip of a bank card and the receiver. For at least these reasons,

Applicant respectfully submits that claims 26-28 are patentable over *Petite*. Accordingly,
Applicant respectfully requests that this rejection be withdrawn and claims 26-28 be allowed.

As to all points not specifically addressed herein, Applicant repeats and realleges the arguments set forth in the Appeal Brief.

No fee is believed to be due in connection with this Reply to Examiner's Answer. If, however, any fee is deemed payable, you are authorized to charge any such fee that may be required for this Reply to Examiner's Answer to deposit account No. 20-0778.

Respectfully submitted,

**THOMAS, KAYDEN, HORSTEMEYER
& RISLEY, L.L.P.**

By: _____


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